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The Insurance Fair Rates and Discounts Act. (Version 1)

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December 20, 2005

SA2005RF0150

VIA PERSONAL DELIVERY

The Honorable Bill Lockyer
Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

DEC 29 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Tricia Knight, Initiative Coordinator

Re: Request for Title and Summary- Initiative Statutory Amendment

Dear Mr. Lockyer:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative statutory amendment. Enclosed is a check for \$200.00. My residence address is attached.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Richard D. Martland.

Thank you for your assistance.

Sincerely,


William P. Campbell, Proponent

Enclosure: Proposed Initiative

SECTION 1. Title.

This measure shall be known as the Insurance Fair Rates and Discounts Act.

SECTION 2. Findings and Declarations.

The People of the State of California find and declare that:

(a) Most California automobile owners carry automobile liability insurance in order to comply with the California Financial Responsibility Law. It is only fair that automobile owners be given all the insurance discounts they statistically deserve.

(b) Valid studies show that automobile owners who continually maintain their automobile liability insurance file fewer claims than those who do not, and they should be awarded an additional discount even though they may have changed insurance carriers several times.

(c) This continuity of coverage discount increases the fairness of the automobile rating system by rewarding conduct within the individual control of every California driver. It is also important that we protect the interests of citizens who serve in the U.S. military. Therefore, this discount shall be available to any person who is absent from the United States while in military service, regardless of any lapse in coverage during the period of military service outside the United States.

(d) The rating system in use today allows many discounts that some qualify for and some do not. Similarly, this continuity of coverage discount is fair and benefits consumers who comply with California's financial responsibility law.

(e) Under current law, the California Department of Insurance must approve every change in rates requested by an insurer, even requests to lower rates. This burdensome process can take months and cost hundreds of thousands of dollars. This cost is ultimately passed on to policyholders, and premium decreases are delayed. Insured California drivers will benefit if insurers are allowed to reduce average rates by up to 7% of the most recent applicable rate for personal lines or 15% of the most recent applicable rate for commercial lines, without being required to go through the formal rate request process with the Department of Insurance. This informal rate decrease may not result in a rate increase for any insured.

SECTION 3. Purpose and Intent.

The purpose of this initiative is to provide an additional discount for drivers who are continuously insured for automobile liability coverage, to ensure fair rates for California drivers and to allow insurers to reduce rates for insureds for a period up to one year, for a decrease up to 7% for personal insurance and 15% for commercial insurance.

SECTION 4. Section 1861.024 is added to the Insurance Code to read:

Sec. 1861.024. (a) Notwithstanding section 1861.02, and in addition to discounts permitted or required by law or regulation, an insurer may offer applicants or insureds an additional discount, for a policy to which Insurance Code Section 1861.02(a) applies, applicable to each coverage provided by the policy, based on the length of time the applicant or insured has been continuously insured for bodily injury liability coverage, with one or more insurers, affiliated or not, during the five years preceding the policy effective or renewal date. This discount is called a continuity discount. When calculating the discount or determining the eligibility for a continuity discount an insurer may also take into account the applicant's or insured's claims experience for the previous five years. Children, with less than five years driving experience, residing with a parent, may be provided the same discount based on their parents' eligibility for a continuity discount.

(b) The applicant or insured may demonstrate continuity of coverage, for a policy to which Insurance Code Section 1861.02(a) applies, by providing proof of coverage under the low-cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by proof of coverage under the assigned risk plans pursuant to Article 4 (commencing with section 11620) of Chapter 1, Part 3 of Division 2, or by proof of coverage from the prior insurer or insurers. Proof of coverage shall be copies of policies, billings or other documents evidencing coverage, issued by the prior insurer or insurers. Continuity of coverage discount shall not be used for the low cost program or the assigned risk plan unless the Insurance Commissioner decides it serves the interests of their policyholders. Continuity of coverage shall be deemed to exist even if there is a lapse of coverage due to an applicant's or insured's absence from the United States while in military service, or if an applicant's or insured's coverage has lapsed for up to 90 days in the last five years for any reason other than nonpayment of premium.

(c) Except for the addition of continuity as a rating factor, the rating factors in use, and the factor weight methodology as set forth in 10 California Code of Regulations Section 2632.8 as it existed, on August 1, 2005 for a policy to which Insurance Code Section 1861.02(a) applies, shall continue in use by the commissioner. In determining classification under any rating factor, an insurer may elect to require reasonable independent support. Any rate established by an insurer pursuant to such amendments must be approved by the commissioner, before use, where required by law.

SECTION 5. Section 1861.02 of the Insurance Code is amended to read:

Sec. 1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

- (1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) *In addition to the continuity discount provided in Section 1861.024 and the rating factors in use on August 1, 2005, which shall continue in use, Such those other factors that the commissioner may adopt by regulation allow and that have a substantial relationship to the risk of loss including in the manner in which they are applied. The commissioner may allow any such additional factors proposed in a class plan submitted for approval. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums.* Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination.

(b)(1) Every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision.

(2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(3)(A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

~~(e) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability. However, notwithstanding subdivision (a), an insurer may use persistency of automobile insurance coverage with the insurer, an affiliate, or another insurer as an optional rating factor. The Legislature hereby finds and declares that it furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively. The Legislature further finds and declares that competition is furthered when insureds are able to claim a discount for regular purchases of insurance from any carrier offering this discount irrespective of whether or not the insured has previously purchased from a given carrier offering the discount. Persistency of coverage may be demonstrated by coverage under the low cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by coverage under the assigned risk plans pursuant to Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2. Persistency shall be deemed to exist even if there is a lapse of coverage of up to two years due to an insured's absence from the state while in military service, and up to 90 days in the last five years for any other reason.~~

~~(d) (c)~~ An insurer may refuse to sell a Good Driver Discount policy insuring a motorcycle unless all named insureds have been licensed to drive a motorcycle for the previous three years.

~~(e) (d)~~ This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with those regulations prior to that date, provided that no such application shall be approved prior to that date.

SECTION 6. Section 1861.05 of the Insurance Code is amended to read:

Sec. 1861.05. (a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is excessive, inadequate or unfairly discriminatory, ~~no~~ consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.

(b) Every insurer which desires to change any rate shall file a complete rate application with the commissioner. A complete rate application shall include all data referred to in Sections 1857.7, 1857.9, ~~1857.15~~, and 1864 and such other information as the commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this article.

(c) The commissioner shall notify the public of any application by an insurer for a rate change. The application shall be deemed approved sixty days after public notice unless (1) a consumer or his or her representative requests a hearing within forty-five days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request. In any event, a rate change application shall be deemed approved 180 days after the rate application is received by the commissioner (A) unless that application has been disapproved by a final order of the commissioner subsequent to a hearing, or (B) extraordinary circumstances exist. For purposes of this section, "received" means the date delivered to the department.

(d) For purposes of this section, extraordinary circumstances include the following:

(1) Rate change application hearings commenced during the 180-day period provided by subdivision (c). If a hearing is commenced during the 180-day period, the rate change application shall be deemed approved upon expiration of the 180-day period or 60 days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

(2) Rate change applications that are not approved or disapproved within the 180-day period provided by subdivision (c) as a result of a judicial proceeding directly involving the application and initiated by the applicant or an intervenor. During the pendency of the judicial proceedings, the 180-day period is tolled, except that in no event shall the commissioner have less than 30 days after conclusion of the judicial proceedings to approve or disapprove the application. Notwithstanding any other provision of law, nothing shall preclude the commissioner from disapproving an application without a hearing if a stay is in effect barring the commissioner from holding a hearing within the 180-day period.

(3) The hearing has been continued pursuant to Section 11524 of the Government Code. The 180-day period provided by subdivision (c) shall be tolled during any period in which a hearing is continued pursuant to Section 11524 of the Government Code. A continuance pursuant to Section 11524 of the Government Code shall be decided on a case by case basis. If the hearing is commenced or continued during the 180-day period, the rate change application shall be deemed approved upon the expiration of the 180-day period or 100 days after the case is submitted, whichever is later, unless disapproved prior to that date.

(e) Notwithstanding the requirements of subparagraph (c) of section 1861.05 or subparagraph (c) of section 1861.01, if an insurer proposes an overall rate reduction and the average rate decrease is no more than seven percent (7%) of the most recent approved rate for personal lines or fifteen percent (15%) of the most recent approved rate for commercial lines, the rate reduction is not subject to prior approval by the commissioner; but the rate reduction shall be submitted no less than thirty days prior to the effective date of the rate reduction and shall remain in effect for up to one year, at which time the most recent approved rate shall be in effect. Nothing in this section shall be construed to allow an insurer to decrease its rates in any twelve month period by more than seven percent (7%) for personal lines or fifteen percent (15%) for commercial lines below the most recent approved rate unless prior approval is received from the commissioner. Such filing shall provide that rates are not increased for any insured.

(f) Notwithstanding Section 1861.01(c) and Section 1861.05(e) but subject to subdivision (a) of this Section, the commissioner may adopt regulations to facilitate rate reductions. Such regulations may permit the filing and use of rate change applications requesting rate reductions without prior approval, and may provide for approval of a range of rates in order to promote competition.

SECTION 7. Conflicting Ballot Measures.

In the event that this measure and another measure or measures relating to continuity of coverage or rating factors or rating methodology or weighting factor methodology, shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 8. Amendment.

Notwithstanding uncodified Section 8 of the November, 1988 Ballot Initiative known as Proposition 103, the Legislature may, by a two-thirds majority vote, amend, repeal, or add to any part of this Act or the provisions adopted by Proposition 103, except that this Section does not apply to the percentage discount provided under Insurance Code Section 1861.02(b) for a Good Driver Discount policy.

SECTION 9. Severability.

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.